The Honorable Steve Chabot

Hearing Statement
Oversight Hearing on "The Supreme Court's School Choice Decision and Congress' Authority to Enact Choice Programs"

Tuesday, September 17, 2002
2:00 p.m.-4:00 p.m.
2237 Rayburn House Office Building

Every child in America deserves a high-quality education—regardless of family income, ability or background. If children are not learning, and schools do not improve, parents should have options, including sending children to better public schools, charter schools, or private or parochial schools. On June 27, 2002, the United States Supreme Court upheld Ohio's school choice program, giving families nationwide more options in providing their children with a high caliber education.

The purpose of this hearing is to examine how the Supreme Court decision clarifies Congress' authority to enact choice programs in which government aid, through the free choice of individual citizens, can be used to allow citizens access to the very best educational and social services our Nation has to offer.

In *Zelman v. Simmons-Harris*,[1] the Supreme Court summarized its prior precedents and stated:

> where a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause ... The incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual recipient, not to the government, whose role ends with the disbursement of benefits.[2]

The Supreme Court held that the Ohio school choice program "is entirely neutral with respect to religion. It provides benefits directly to a wide spectrum of individuals, defined only by financial need and residence in a particular school district. It permits such individuals to exercise genuine choice among options public and private, secular and religious. The program is therefore a program of true private choice. In keeping with an unbroken line of decisions rejecting challenges to similar programs, we hold that the program does not offend the Establishment Clause."[3] Indeed, Ohio's

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[1] 2002 WL 1378554 (U.S.).

[2] *Id.* at *8.

[3] *Id.* at *12.

school choice program was upheld even though 96% of the students participating in the program enrolled in religious schools.[4]

Justice O'Connor wrote a concurring opinion in which she backed the majority opinion fully, criticized the dissent at length, and characterized the dissent's claims as "alarmist." In his concurring opinion, Justice Thomas emphasized the uniquely liberating nature of education by noting the words of Frederick Douglass, who wrote: "Education ... means emancipation. It means light and liberty. It means the uplifting of the soul of man into the glorious light of truth, the light by which men can only be made free."[5] Douglass also observed that "no greater benefit can be bestowed upon a long benighted people, than giving to them, as we are here earnestly this day endeavoring to do, the means of an education."[6]

It is now the Law of the Land that government has the authority to empower individuals who seek excellence through educational and social services provided by the Nation's people of faith. Government aid through vouchers and other forms of indirect assistance is not only constitutional, but also a most promising means toward empowering the most desperate in our Nation to choose the best educational and social services available, including services provided by people of faith.

The *Zelman* decision has been widely hailed. As the *Washington Post* wrote in a lead editorial:

> *In fact, our quarrel with the Cleveland program would be that the vouchers are too small.* Imagine how much competition might be generated, and with what respect poor parents might be treated, if they were given an $8,000 voucher for each child, and public schools really had to prove they were worth what society now spends on them.[7]

And as the Secretary of Education has written, "It is difficult to overstate the importance of the Supreme Court's decision yesterday in Zelman v. Simmons-Harris ... [I]t adds momentum to two of President Bush's policy preferences: increasing education choices and options for parents, and leveling the playing field for faith-based organizations to compete for federal dollars to run educational and community service programs."[8]

H.R. 7, the Community Solutions Act, passed the House last year but remains stalled in the Senate. H.R. 7 contains provisions authorizing the administration of a wide array of federal

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[4] *Id.* at * 4.

[5] The Blessings of Liberty and Education: An Address Delivered in Manassas, Virginia, on 3 September 1894, in 5 The Frederick Douglass Papers 623 (J. Blassingame & J. McKivigan eds.1992).

[6] *Id.* at 623.

[7] *Washington Post* Editorial, "Letting Parents Decide," *The Washington Post* (June 28, 2002) at A28.

[8] Rod Paige, "A Win for America's Children," *The Washington Post* (June 28, 2002) at A29.

programs through vouchers and other forms of indirect assistance. H.R. 7 defines "indirect assistance" as "assistance in which an organization receiving funds through a voucher, certificate, or other form of disbursement ... receives such funding only as a result of the private choices of individual beneficiaries." The Supreme Court has now reaffirmed the constitutionality of precisely those forms of government assistance in which aid is directed to religious organizations as a result of "private choice."

It is now up to Congress to help fulfill the promise of the Supreme Court's decision. This hearing will start a discussion of Congress' ability to do so.

Before closing, I'd like you to listen now to some prophetic words: "Regardless of family financial status, ... education should be open to every boy or girl in America ... New methods of financial aid must be explored, including the channeling of federally collected revenues to all levels of education and, to the extent permitted by the Constitution, to all schools."[9]

Those words were penned by social scientist and Democratic Senator Daniel Patrick Moynihan. They were also part of the 1964 Democratic Party platform.

I look forward to working with Members of both parties to enact true choice programs, including those provided for in H.R. 7, the Community Solutions Act.

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[9] Daniel Patrick Moynihan, "A Promise Long Deferred," *The Washington Post* (July 1, 2002) at A17 (quoting 1964 Democratic Party platform).